

MAR - 4 2009

UNITED STATES BANKRUPTCY COURT
A EASTERN DISTRICT OF CALIFORNIA

EASTERN DISTRICT OF CALIFORNIA

In re

No. 08-27996-A-7

DCN# JDM-2

Debtors.

U.S.C. § 727(b); Beezley v. California Land Title Co. (In re

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1 Beezley), 994 F.2d 1433 (9th Cir. 1993); White v. Nielsen (In re
2 Nielsen), 383 F.3d 922, 925 (9th Cir. 2004). It is unnecessary
3 to reopen the case and amend the schedules in order to discharge
4 the claim of an omitted creditor.

5 If the omitted creditor's claim could have been excepted
6 from discharge by 11 U.S.C. § 523(a)(2), (a)(4), or (a)(6), the
7 debtors' failure to schedule the claim when the petition was
8 filed meant that the omitted creditor did not receive notice of
9 the deadline for filing a complaint. See 11 U.S.C. § 523(c);
10 Fed. R. Bankr. P. 4007(b). Therefore, unless the omitted
11 creditor had actual knowledge that the petition had been filed in
12 time to file a timely dischargeability complaint, the failure to
13 initially schedule the claim may mean it is nondischargeable. 11
14 U.S.C. § 523(a)(3)(B). Amending the schedules, however, will
15 have no impact on the issue.

16 In short, merely reopening the case to permit the amendment
17 of the schedules will have no effect whatever. The debtors do
18 not need to amend the schedules. If the claim of the omitted
19 creditor was otherwise dischargeable by a chapter 7 discharge, it
20 was discharged even though the creditor was omitted from the
21 schedules.

22 If the omitted creditor or the debtor wants a declaration
23 that the claim is, or is not, made nondischargeable by section
24 523(a)(3)(B), one of them must file an adversary proceeding. See
25 In re Costa, 172 B.R. 954 (Bankr. E.D. Cal. 1994).

26 In connection with the resolution of any such adversary
27 proceeding, two questions must be determined. Did the omitted
28 creditor have actual notice of the bankruptcy filing in

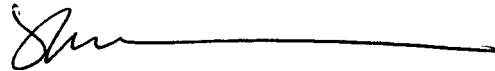
1 sufficient time to file a timely dischargeability complaint? See
2 Fed.R.Bankr.P. 4007(c). And, if there was no actual notice of
3 the petition, is its claim otherwise nondischargeable under 11
4 U.S.C. § 523(a)(2), (a)(4), or (a)(6)?¹ If the omitted creditor
5 had actual notice, or if its claim is not excepted from discharge
6 by 11 U.S.C. § 523(a)(2), (a)(4), or (a)(6), the court will
7 declare that the omitted claim was discharged.

8 However, whichever declaration is appropriate, it can be
9 given only in an adversary proceeding.

10 Therefore, the court will permit this case to be reopened.
11 Because this was a "no-asset, no bar date" case, the unscheduled
12 claim of the omitted creditor was discharged unless it is made
13 nondischargeable under sections 523(a)(3)(B). To obtain a
14 declaration that an omitted claim is not made nondischargeable by
15 section 523(a)(3)(B), the debtors (or the omitted creditor) must
16 file, serve, and prevail in an adversary proceeding. The only
17 reason to reopen the case is to permit the filing of such an
18 adversary proceeding.

19 Dated: *4 March 2009*

By the Court



Michael S. McManus
United States Bankruptcy Judge

23
24 ¹ If the omitted creditor is claiming the debts are non-
25 dischargeable under 11 U.S.C. § 523(a)(1), (5), (7)-(15), (16),
26 (17), the creditor cannot be prejudiced by the omission of its
27 claim in a "no asset" case. Unlike section 523(a)(2), (4) or (6),
28 there is no deadline for the filing of such dischargeability
complaints and nonbankruptcy courts may determine whether the
debts fall into the exceptions enumerated in section 523(a)(1),
(5), (7)-(15), (16), (17). 11 U.S.C. § 523(c)(1); Fed.R.Bankr.P.
4007(c).

CERTIFICATE OF MAILING

I, Susan C. Cox, in the performance of my duties as a
judicial assistant to the Honorable Michael S. McManus, mailed by
ordinary mail to each of the parties named below a true copy of
the attached document.

John Maxey
13 SierraGate Plaza #B
Roseville, CA 95678

Hector and Angela Ayllon
PO Box 852
Roseville, CA 95661

Dated: March 4, 2009

Susan C. Cox

Susan C. Cox
Judicial Assistant to Judge McManus